

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 SOUTHERN DIVISION

4 IN RE:)
5)
6 CAMP LEJEUNE WATER LITIGATION) Docket No.
7) 7:23-cv-897
8)
9)

10 *****

11 TUESDAY, MARCH 19, 2024
12 STATUS CONFERENCE HEARING
13 BEFORE THE HONORABLE:
14 ROBERT B. JONES, JR., MAGISTRATE JUDGE
15 In Wilmington, NC

16 APPEARANCES:

17 On behalf of the Plaintiffs:

18 J. Edward Bell, III; Eric Flynn; Hugh R. Overholt

19 On Behalf of the Defendant:

20 John Adam Bain, Sara Mirsky, Bridget Bailey Lipscomb,
21 Joseph Turner, Michael Cromwell

22 Court Reporter: Tracy L. McGurk, RMR, CRR
23 Official Court Reporter
24 413 Middle Street
25 New Bern, NC 28560
(419) 392-6626

Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Commenced at 10:58 a.m.)

2 THE COURT: Good morning, everyone. As you
3 can see, we're in a new courtroom this morning. This
4 is our hearing room. It's new to the building. It
5 historically was Courtroom 2 on the second floor. In
6 this building we have Courtroom 3 on the first floor;
7 Courtroom 1 on the second floor, and now we have
8 Courtroom 2 on the third floor. But thank you for
9 being here.

10 So I've read the status report. And as we
11 do in each of these, let me know what -- I think I know
12 the answer, but let me know what you guys are waiting to
13 hear from the Court on as far as motions that have
14 ripened as mature.

15 MR. BELL: Your Honor, the two motions
16 that -- or the two issues that we would like to bring to
17 your attention is there is, of course, a motion for
18 partial summary judgment, and that's pending. There's
19 also competing orders or competing proposed orders on
20 the Track 2 discovery issues.

21 THE COURT: Before we get to the tracks,
22 I've printed off a motions report, and I've got -- if
23 anyone has their docket sheet or the docket opened, it's
24 109, a Motion For Relief from E.D.N.C. Local Rule.
25 That's relative to the summary judgment motion.

1 So you've got a Partial Summary Judgment
2 Motion on Causation, and there's a Motion For Leave to
3 Appeal.

4 MR. BELL: That's correct.

5 THE COURT: And that's my understanding.
6 Those are the three motions that have ripened that
7 you're waiting for the Court to issue a ruling on.
8 That's correct?

9 MR. BELL: Yes, sir. And the Track 2
10 issues.

11 THE COURT: Okay.

12 MR. BELL: I'm not sure that's actually a
13 motion, but we were required to submit a proposed
14 scheduling order. I use that term --

15 THE COURT: Right.

16 MR. BELL: And so because Track 2 has now
17 been chosen, we're already in deadline periods. That
18 order is pretty important.

19 THE COURT: Okay. Tell me first, before we
20 get to the tracks, tell me first, or just confirm:
21 Everything but Track 1 is in place? You guys are
22 discovering, taking depositions --

23 MR. BELL: Every day.

24 THE COURT: -- and heeding deadlines?

25 I think that fact discovery was changed,

1 right?

2 MR. BAIN: The deadline is mid June, Your
3 Honor, for fact discovery. And then the expert
4 disclosures start after that.

5 THE COURT: So update on Track 2. I know
6 the diseases have been selected. Right?

7 MR. BELL: Yes.

8 THE COURT: And so what's next?

9 MR. BELL: We were supposed to submit a
10 joint scheduling order; if we couldn't agree, submit
11 separate ones. There were a couple areas we weren't
12 able to agree on, so we've submitted counterproposals,
13 if you will.

14 THE COURT: Right.

15 MR. BELL: And those are kind of important,
16 Your Honor, because we are now going into some of those
17 deadlines, depending on which order is going to be
18 chosen.

19 THE COURT: So kind of for those who are
20 listening at home, can you summarize what those issues
21 are that you want to be heard from the Court on?

22 MR. BELL: Off the top of my head, Your
23 Honor, one has to do with the time period for when the
24 selection of the bellwether plaintiffs will be. And
25 that's important, of course. So that's the major thing

1 that we're concerned about.

2 The time to do the depositions and things
3 like that, I think we're ready to go on all that.

4 THE COURT: I'm sorry; could you repeat
5 that?

6 MR. BELL: There was a motion, I think by
7 the government, to reduce that number from ten to
8 eight -- or not a motion, but part of their proposal.
9 So there's a couple of things that would be important
10 for us to know.

11 THE COURT: You said the number of
12 depositions in Track 2?

13 MR. BELL: I'm sorry, Your Honor. We're
14 supposed to select ten per side for each disease.

15 THE COURT: I see.

16 MR. BELL: And so the government has said,
17 or has asked, could you do eight per side?

18 MR. BAIN: Four per side.

19 MR. BELL: Excuse me. I'm sorry. Four per
20 side, with a total of eight.

21 MR. BAIN: Eight for each disease.

22 MR. BELL: We thought that the ten per side
23 was better, gave us a better way to have representative
24 samples. Four would only give two each -- or four
25 each?

1 MR. BAIN: Four per side.

2 MR. BELL: That's kind of --

3 Is that per judge?

4 MR. BAIN: No, it's per disease.

5 MR. BELL: So if you had four, some judge
6 may only get one, or maybe none on that particular
7 disease, depending on where the selections fall.

8 If there's a need to reduce that number, we
9 should probably look at it after we make our selection.
10 That's our position.

11 MR. BAIN: So our proposal is that we should
12 use some of the lessons we've learned in Track 1 in how
13 we do Track 2. It seems apparent to us that 100
14 plaintiffs is too many and is not necessary to get the
15 information that we need for these diseases going
16 forward in Track 2. And because of us going forward in
17 Track 1, it may be that we'll be able to make Track 2
18 more efficient.

19 We propose that the discovery be bifurcated
20 so that the plaintiffs in Track 2 establish general
21 causation first before we get into individual causation
22 for the individual plaintiffs. That doesn't mean we
23 can't go forward and select the plaintiffs and start
24 gathering the records for them. But they should come
25 forward with some evidence showing that the diseases

1 that are in Track 2 are connected to the water at Camp
2 Lejeune before going forward with more fact-based
3 discovery.

4 We're doing 100 depositions right now in
5 Track 1 for the diseases that are most likely --

6 THE COURT: You've done two-thirds of them,
7 haven't you?

8 MR. BAIN: We've scheduled, I think, almost
9 every one of them. And we're now going on to fact
10 witness and treating physician depositions.

11 So we think that we'll have discovery done
12 well on all cases by the June 15th deadline for Track 1.
13 And we should use some of the things that we've learned
14 from that process to go forward through Track 2.

15 MR. BELL: I don't disagree with the concept
16 of lessons learned is a good thing, but I'm concerned
17 that if we pick a lower number now, the spread for the
18 judges will be uneven. So we would like to go do the
19 ten and ten like we did do, then come back to the Court
20 and say: All right, let's rethink that and maybe have
21 some that are prioritized. So you could take the ten
22 and ten and say: All right, guys, you all get ready for
23 half of those, or something like that. And that way we
24 think it's a better process.

25 MR. BAIN: If I could say one more thing,

1 Your Honor.

2 One thing we've learned in Track 1 is that a
3 lot of plaintiffs who are alleging not only that the
4 Track 1 disease is related to the contamination, but
5 they have some other condition that's also independently
6 related to the contamination. And so our thought with
7 the Track 1 is we're just supposed to be focussing on
8 those diseases that were selected for Track 1. So with
9 these plaintiffs with multiple illnesses, it makes it
10 difficult because we have to get experts to look at
11 these different illnesses and say whether or not there's
12 any relationship between these other illnesses for these
13 other plaintiffs.

14 So we've asked the plaintiffs to let us know
15 how many of their plaintiffs in Track 1 are alleging
16 that additional diseases besides the Track 1 disease
17 related to the contamination. And maybe we can come up
18 with an agreement that we put those plaintiffs aside,
19 because they're going to be more difficult, going to
20 require more experts, and that's really not what Track 1
21 is supposed to be focused on, and focus on those people
22 who are only claiming the Track 1 disease is related to
23 the contamination.

24 So that's another issue that we brought up
25 in the Track 2 proposal, that the only plaintiffs

1 selected for Track 2 are those people who have just the
2 Track 2 diseases related to the water.

3 MR. BELL: It's going to be difficult,
4 Judge, because most of our clients have multiple
5 illnesses. Most of them, the majority.

6 THE COURT: Illnesses that are in the
7 lawsuit or illnesses that are not in the lawsuit?

8 MR. BELL: Either filed or to be filed.
9 So, for example, we have a client who has Parkinson's
10 but also has prostate cancer. So both of those, from
11 our standpoint, we believe are related.

12 THE COURT: Are these all diseases that have
13 been identified?

14 MR. BELL: Yes, Your Honor.

15 THE COURT: In other words, are they --
16 you've seen the list.

17 MR. BELL: Yes, sir. Most of the ones
18 we're talking about have --

19 THE COURT: Will at some point be on a
20 track?

21 MR. BELL: Yes, sir.

22 So at one time there was a thought: Well,
23 just try one at a time.

24 And you can't do that because then you're
25 required to try your entire case.

1 But there are very few -- and we're doing
2 the research, as Mr. Bain has asked us to do. But
3 there are very few of ours that don't have -- when I say
4 "ours," I'm talking Plaintiffs' Leadership -- that don't
5 have multiple problems.

6 So we are submitting, I think tomorrow, a
7 proposal to the judges on a Rule 16 conference. And it
8 might be a good time to discuss that.

9 But one of the things we have coming up,
10 Judge, is we have a March 27th deadline to opt out of
11 the Track 2. And because those two orders haven't been
12 signed, we're concerned about that deadline without us
13 having identified Track 2 plaintiffs.

14 So that's kind of where we are on that.

15 THE COURT: Are there other issues that you
16 wanted to address within Track 2? I just want to flesh
17 this out. I understand they may be in your motion, but
18 I just want to flesh it out at this point.

19 MR. BELL: We don't disagree that picking a
20 cohort of cases out of the hundred to concentrate on is
21 a good idea.

22 I think -- for example, we have a couple
23 folks, and we're getting ready to file some motions on
24 them, that all of a sudden they have an end-of-life
25 diagnosis. So we're working on that. And we've

1 talked to the government about that.

2 So it may be that we should sit down soon
3 and go through that Rule 16. We think there's some good
4 give and take on both sides to work that out. But
5 we're probably going to need some guidance to get it
6 resolved.

7 THE COURT: Is that it?

8 MR. BAIN: I think that's the main thing.
9 I mean, we believe that discovery of Track 2 should be
10 staged after Track 1 has been finished and that it
11 should be bifurcated. Those are our main issues. And
12 that the plaintiff pool should be reduced.

13 THE COURT: And you laid that out in your
14 filing?

15 MR. BAIN: Yes.

16 THE COURT: What about Track 3? Is there
17 anything to discuss as to Track 3?

18 MR. BELL: There's a time frame in the CMO.
19 I don't know what the date is right off the top of my
20 head.

21 MR. BAIN: I think we both submitted
22 diseases for Track 3.

23 MR. BELL: You're right. I'm sorry. The
24 Court chose three of our proposals --

25 THE COURT: Yours was contingent, I think,

1 on what was selected for Track 2. I remember that.

2 MR. BELL: I don't want to be presumptuous
3 to assume, but I'm assuming that maybe the Track 3 would
4 be the balance of those five others. That's kind of
5 what we're going on.

6 THE COURT: All right.

7 Well, how about our favorite topic,
8 discovery.

9 There are two motions on my motions report:
10 Docket Entry 81, which is Plaintiff's Motion
11 to Compel Document Production in Response to the First
12 Set of Request For Production, filed on 12/14.

13 And then it looks like Defendant's
14 Cross-Motion for Protective Order at Docket Entry 93,
15 filed 12/21.

16 Are those moot, or is there still stuff
17 we're talking about?

18 MR. BELL: Well, here's our issue, Judge.
19 We need to have some help. And I'm not sure if that
20 would help the government or not. But we're getting
21 rolling production. And we don't know when that's
22 going to be finished. The formal response says: We'll
23 get it to you before the end of fact discovery, which
24 means, if you use that deadline, we could get documents
25 or production the week before the deadline in June.

1 Up until now we haven't gotten any privilege
2 logs of any substance. We had some from the prior
3 cases. But I recognize it's hard to do a privilege log
4 until you've completed the discovery. We understand the
5 issue. But we still have got to have some finality on
6 our request.

7 And that motion is pending, but I'm not sure
8 it's ripe. We could argue it, but then if they're still
9 getting documents and looking and trying, I see that as
10 well.

11 THE COURT: I think there were parts of the
12 motion that we've already addressed.

13 MR. BELL: That's correct.

14 THE COURT: And so I just want to know what
15 remains in that.

16 MR. BELL: Our first request to the Court is
17 that we get some date by which we can say this is -- in
18 other words, your production is complete, and how long
19 after that or at that same time will we get privilege
20 logs?

21 Now, privilege logs are important, Your
22 Honor. Just for an example, early on in this case we
23 learned through the government that they are going to
24 rely on a 2009 scientific study. And we anticipate
25 that there will be privilege logs on that study. We

1 have already seen large redactions of information from
2 the study, or from the materials. And so we obviously
3 need to address that.

4 But we don't want to file a motion until
5 we've had a chance to know: All right, this is your
6 privilege log; let's have a meet and confer; let's try
7 to work it out and see where we go.

8 So timing is important. We just need to
9 know those dates.

10 THE COURT: Okay.

11 Mr. Bain?

12 MR. BAIN: I'd like Ms. Mirsky to address
13 this.

14 MS. MIRSKY: Sarah Mirsky for the United
15 States.

16 We can provide plaintiffs with a written
17 update on the status of the various productions. We
18 have largely completed those productions. But we can
19 provide an updated timeline shortly.

20 As to the privilege logs --

21 THE COURT: So you're doing the rolling
22 production, and they just don't know what's coming next?

23 MS. MIRSKY: Yes.

24 THE COURT: So you can give them closure on
25 that, a status of: Hey, guys, RFP 2 is done; it's

1 complete. Expect no more. Is that right?

2 MS. MIRSKY: Yes, sir. We can do that, and
3 we can also update --

4 THE COURT: Is that helpful?

5 MR. BELL: Yes, of course it is.

6 THE COURT: Okay.

7 MS. MIRSKY: And we can update our formal
8 responses as well so that they reflect that information
9 so that we're all working off of the same set of
10 information.

11 THE COURT: Okay.

12 MS. MIRSKY: As to the privilege logs, I
13 believe there is one outstanding from the EPA. They're
14 reviewing 37 documents out of thousands that we've
15 produced. And we expect to have that privilege log
16 ready in the next few weeks.

17 There are privilege logs that are being
18 reviewed by ATSDR currently. And we have let
19 plaintiffs know that we will be producing those on a
20 rolling basis as well.

21 So we can work with plaintiffs to make sure
22 that they have the information that they need.

23 MR. BELL: That's all I can ask for.

24 But I'm a little worried that the -- well,
25 we'll look at their final -- their notice, Judge. But

1 our concern, of course, is we've got to get some of this
2 information to experts.

3 THE COURT: Right.

4 I mean, you see the concern, right? They've
5 got a deadline.

6 MS. MIRSKY: I do. And the United States
7 has been producing millions of pages of documents. And
8 we are working with plaintiffs to try to prioritize
9 anything that they need more expeditiously.

10 As I said, I believe that most of our
11 productions from the agency-specific documents are
12 complete at this point. But we will work with
13 plaintiffs to find out if there's anything else that
14 they need at this time.

15 THE COURT: Is that good?

16 MR. BELL: Yes, Your Honor. In fact, we
17 have a meet and confer after the hearing today on a
18 couple of issues.

19 THE COURT: All right. Good.

20 I wanted to ask about a settlement matrix,
21 but I think that's probably premature. Is it? We
22 don't have anything to put in it, right?

23 MR. BELL: We'd be glad to put some numbers
24 in it, Your Honor. I'm not sure that's --

25 THE COURT: Is the one at the DON the one

1 the Navy is doing?

2 MR. BAIN: The Navy is working on their
3 database, and they're ingesting all the -- they've got
4 it online now, and they're ingesting historical material
5 into it that they've accumulated.

6 I think what we need to do -- and we need to
7 work with the Plaintiffs Resolution Committee -- is to
8 try to see how far we can get on the questionnaire that
9 we've been working on, which is going to provide
10 information that will go into a settlement matrix. So
11 that's where we are right now in that global settlement
12 process. There are a few issues on the questionnaire
13 that still need to be resolved. And that's where we
14 were looking down the line possibly a settlement master
15 getting involved and helping us to resolve those issues.

16 Once those issues are resolved, then what
17 values are put into the matrix, whether that requires
18 feedback from decisions of the Court or whether a
19 special master can help us get those values set, that's
20 further down the line.

21 The questionnaire is the first part of the
22 process. And then whether we need a database to house
23 the information from the questionnaire separate from the
24 Navy's database -- hopefully the Navy's database
25 information can be transferred to the other database or

1 be used, because they're accumulating a lot of
2 information on the disease, the plaintiff, the
3 representative, where they lived, things like that.

4 So I think we're making some progress. We
5 kind of stopped for a while as we were seeing if a
6 settlement master was going to be appointed. But based
7 on the conference we had two weeks ago, we need to
8 restart that process, I think, and keep it going. So
9 that's where we are on that.

10 THE COURT: Would it be helpful for the
11 Court to give some instructions on that?

12 MR. BELL: Yes. Especially if there's
13 going to be some movement toward a master or not. If
14 we knew that, then that would tell us what we need to
15 do.

16 We have a little bit of a procedural -- we
17 believe certain things need to be done first before
18 certain, you know --

19 THE COURT: Right.

20 MR. BELL: And we're at odds on that, and
21 I'm a not sure it can be resolved without some help.

22 MS. BASH (telephonically): Can you hear me,
23 Your Honor? I don't know if others can hear me.

24 THE COURT: I don't know who you are, but I
25 can hear you.

1 MS. BASH: This is Zina Bash from the
2 Plaintiffs' Leadership Group. May I speak on this?

3 THE COURT: Sure.

4 MS. BASH: I'm sorry I wasn't able to be
5 there today.

6 But just echoing some of what Mr. Bain said,
7 we have been making, I think, substantial progress on
8 the questionnaire itself.

9 And when we talk about a matrix, what we see
10 the questionnaire doing is feeding into or becoming
11 visually a matrix. And so when we talk about a
12 questionnaire, it will actually become data fields in a
13 matrix.

14 And we did pause, as Mr. Bain said, when we
15 thought that the appointment of a settlement master was
16 imminent, kind of to give him a chance to catch up to
17 where we were, see where we had reached points of
18 disagreement, and go from there.

19 But we can easily pick back up where we left
20 off and continue to make progress until there is a
21 settlement master in place. And that's actually on my
22 plate. And I plan to put kind of our turn, the PLD's
23 turn of the questionnaire back to the DOJ this week.

24 MR. BELL: We probably need to discuss that,
25 Your Honor, within our group.

1 THE COURT: Okay.

2 What else should I know about anything?

3 MR. BELL: Well, obviously our concern early
4 on was that the government didn't include us at all in
5 their values they put into the EO option. They won't
6 negotiate --

7 THE COURT: That's just an offer, right?

8 MR. BELL: It is. But we think a
9 settlement master or someone should help us with the
10 methodology of what we're going to do with the matrix.
11 In other words, if the matrix is going to be taken and
12 then they're going to make an offer, and that's it, then
13 they can make an offer already. So it's the process
14 we're concerned about right now.

15 THE COURT: I would expect, if you're
16 talking about the lawsuits versus the admin claims, I
17 would assume that the settlement discussions -- however
18 you want to describe them -- in the lawsuit will be more
19 of a give and take like a typical mediation versus what
20 I'm describing as the admin claims through the EO.
21 Right?

22 MR. BELL: Yes and no. We haven't gotten
23 any indication that there would be anything like that.
24 They are taking it, in essence, Judge -- and this
25 happens in every case -- they're taking our very best

1 cases and trying to get those settled in the EO, which
2 is interesting. But we are not able to call them back
3 and say: Well, we'll take X. They won't let us
4 counteroffer. So there's really nothing right now
5 going on in that regard.

6 MR. BAIN: Yes, Your Honor. The EO was
7 intended, as I think Judge Dever said, an off-ramp to
8 litigation, so that people could get an offer early.
9 The negotiated settlements are going to take time.

10 THE COURT: But it's not negotiated. It's
11 just an offer.

12 MR. BAIN: It's just an offer, right. And
13 it's been successful. Forty-three to date have been
14 accepted. That's a very high percentage of the offers
15 that have been made, both in the litigation and in the
16 administrative process.

17 THE COURT: Of the ones -- of the cases that
18 have come into the court, how many of those have done
19 the off-ramp?

20 MR. BAIN: Eighteen.

21 THE COURT: Eighteen?

22 MR. BAIN: Yes.

23 And so far only 11 have been explicitly
24 rejected; 35 have expired by the terms; and some are
25 still pending. But we're continuing to examine cases

1 to see whether they're eligible for this, both in the
2 administrative process and in the litigation.

3 In fact, we think we'll be finished with
4 looking at the cases in litigation sometime this summer
5 or fall, so we'll have gone through all those cases to
6 see whether they're eligible for EO offers.

7 The administrative claims, of course, is
8 much more open, and there could be a lot more in that
9 process that would be eligible.

10 THE COURT: The administrative claims
11 process closes in August; is that right?

12 MR. BELL: Well, as of -- there's an issue
13 there.

14 THE COURT: Isn't there a deadline?

15 MR. BELL: The way the statute reads, there
16 actually may not be. If you read the statute, it says
17 the deadline is this and this. But the deadline is your
18 illness has to accrue prior to the statute passing,
19 which is August 2022.

20 But then there's a provision in there
21 that -- there's no provision that says you've got to
22 file your claim prior to August 10, 2024. It just says
23 you can't file it if it doesn't accrue before that.

24 MR. BAIN: Our position is that there is a
25 limitations period, and the claims do have to be filed

1 by August 10, 2024. So we hope at that time we'll have
2 a picture of what the global number of claims is.

3 THE COURT: Have we talked about all the
4 discovery? I thought there was some water -- ATSDR
5 water health project files. Is that right?

6 MR. BELL: We're trying to save the best for
7 last.

8 Eric Flynn, who is one of my law partners,
9 Your Honor, is going to address your order that was
10 issued on the files of ATSDR. The issue is on the
11 water --

12 THE COURT: Which is different, right?

13 MR. BELL: Different --

14 THE COURT: Water Modeling versus --

15 MR. BELL: We are the ones that are trying
16 to put our stuff together for them. They haven't
17 gotten that yet because we haven't completed. We're
18 trying to get our technical people to see how we could
19 search their database. If you recall, the protected
20 state registries is what we're talking about on that
21 one. That's a separate issue. But we're working on
22 that.

23 But the issue of the -- remember the mirror
24 image motion we had? The order came down. We have a
25 request to reconsider that.

1 THE COURT: Following the order?

2 MR. BELL: Following the order.

3 THE COURT: I didn't resolve it all? I
4 created more problems?

5 MR. BELL: I think so -- well, most
6 respectfully, Your Honor, we see some potential
7 problems, and we're concerned about it.

8 And I'll ask Mr. Flynn if he can address it.

9 THE COURT: Okay.

10 Do you know of this, Mr. Bain?

11 MR. BAIN: I wasn't -- I thought they might
12 seek some type of reconsideration, but they have not met
13 with us.

14 THE COURT: You all haven't talked about it?

15 MR. BAIN: Well, Mr. Bell did make some
16 remarks late last week about it, but we didn't have any
17 type of meet-and-confer negotiation about it.

18 THE COURT: I just wondered how much I need
19 to hear about it today versus --

20 MR. BELL: We're not going into the facts.
21 We're going to talk about procedural issues.

22 THE COURT: Okay. Go ahead.

23 MR. FLYNN: Good morning, Your Honor. Eric
24 Flynn from Bell Legal Group. It's short; I promise.

25 So I think what we would request

1 respectfully is that we have a time period within which
2 to file a motion for reconsideration. I think it's
3 going to take the government a little bit longer than
4 that time period to provide us the information. We
5 would just ask that we hold that time period in abeyance
6 so we can just look at what's there and then make a
7 decision as to whether or not to seek reconsideration.

8 THE COURT: What do I need to reconsider? I
9 thought I gave you what you wanted.

10 MR. BELL: No, Your Honor.

11 THE COURT: No, I didn't?

12 MR. BELL: None of the -- the mirror image
13 file was not allowed. And so what we'd ask -- this
14 Friday is the deadline for reconsideration. But the
15 government still has time to produce everything.

16 THE COURT: And they're in the process of
17 doing that; is that right?

18 MR. BELL: Right.

19 So what we're asking is just allow us to
20 have an extension or hold in abeyance, and let's see
21 what they produce. If we can put it back together, we
22 won't need to come back to see you.

23 THE COURT: What do you want, like, 14 days
24 after they produce?

25 MR. BELL: That would be great, Your Honor.

1 THE COURT: Any objection to that?

2 MR. BAIN: No, Your Honor.

3 THE COURT: Okay.

4 MR. BELL: Thank you.

5 MR. FLYNN: Thank you.

6 THE COURT: Anything else?

7 MR. BAIN: Well, I want to bring up again
8 the issue raised last time, which is the Common Benefit
9 Order. And I know Mr. Bell was going to look into
10 that, that it doesn't apply to the EO offers that were
11 made either as part of the litigation or the Navy.
12 Hopefully Mr. Bell has had time to talk with colleagues
13 about it. I just wanted to make sure that that's clear
14 on the record, that both parties agree that the holdback
15 does not apply to those settlements.

16 MR. BELL: Well, we're working on that,
17 because it's tricky, Judge.

18 Without getting into the facts now, we're
19 trying to figure out when that particular group of EO
20 offers ends. In other words, if that EO goes for the
21 life of the case, then we have a problem with that in
22 regards to the way the CMO may apply to that. So we're
23 working on that. We'll get with the government on it.
24 We're trying to wade through it ourselves.

25 THE COURT: Is there a preferred time to

1 rule on that issue or make a decision on that?

2 MR. BAIN: Well, we'd like to have it
3 clarified. We're making payments without doing a
4 holdback from these payments. So if that's not what
5 was intended in the order, which we think it was
6 intended in the order, then we need to know that sooner
7 rather than later.

8 I think, talking to others on the
9 plaintiffs' committee, that that's the understanding.
10 But I want to make sure that all the plaintiffs are in
11 agreement to that. And so it may be that we just need
12 to talk further and make sure it's clarified. But I
13 just -- I don't want to hang it out there too long and
14 us not to get it set on the record what the
15 understanding is.

16 THE COURT: Okay.

17 Anything else?

18 MR. BELL: Nothing right now, Your Honor.

19 As we discussed last time, we think the next
20 hearing would be in a month instead of two weeks.

21 THE COURT: A month? Is that a sign that
22 progress is being made?

23 MR. BELL: Well, I thought it was a pretty
24 good day today. So we've also, Your Honor, pursuant to
25 the Court's request, brought some updated data for the

1 Court.

2 THE COURT: Census?

3 MR. BELL: Yes, Your Honor.

4 THE COURT: Excellent.

5 What do you think?

6 MR. BAIN: I'm fine with skipping the next
7 hearing and having it, what, four weeks from now?

8 MR. BELL: Yes.

9 And if it's okay, Judge, if we need you, as
10 you indicated early on in your order, we could give you
11 a ring.

12 THE COURT: Any time. I'm available any
13 time.

14 I would assume that the value of these is
15 more than what we're just talking about here in the
16 courtroom. You guys see each other face to face;
17 you're working things out, planning things.

18 MR. BELL: We have a meet and confer today.

19 THE COURT: That's what's going on, right?

20 MR. BAIN: Uh-huh.

21 THE COURT: I would assume that you're doing
22 that when you're not here as well.

23 So I guess that's April, mid April, late
24 April?

25 MR. BELL: April 19, I believe, Your Honor.

1 THE COURT: So I selected, of the days in
2 the week when I set these dates, I surveyed the calendar
3 for the day of the week that seems to avoid public
4 holidays, and that was Tuesday. Are Tuesdays good?

5 MR. BELL: They're good for us, Your Honor.

6 THE COURT: So on April 16th I start a
7 three-day stretch of criminal matters in New Bern. I
8 don't think I'm going to have time for a status
9 conference. I could do it maybe the 15th. That's a
10 Monday. Or we could set it for the 23rd, which is a
11 Tuesday.

12 MR. BELL: The 15th sounds good to us.

13 MR. BAIN: Personally the 23rd would be
14 better for me. I'll be somewhere else that weekend
15 before the 15th for a wedding. It will be hard to get
16 here the morning of the 16th for me.

17 MR. BELL: We always agree to a wedding.

18 THE COURT: Mr. Bell, the 23rd?

19 MR. BELL: Yes, Your Honor.

20 THE COURT: Do you all think taking a month
21 off, at least from coming to see me, is going to be
22 problematic?

23 MR. BELL: Judge, if you wanted to have a
24 telephone conference or something, if you'd like.

25 THE COURT: Why don't we consider that. If

1 we could do that, maybe --

2 MR. BELL: We could do it --

3 THE COURT: -- two weeks' time?

4 MR. BELL: Yes.

5 THE COURT: I'll look at that.

6 MR. BELL: Maybe zoom or something like
7 that.

8 MR. BAIN: That would be fine, Your Honor.

9 MR. BELL: Your Honor, maybe I'll take a tie
10 with me on my vacation.

11 MR. BAIN: I wanted to let you know we've
12 hired a couple staff who will be in North Carolina at
13 the courthouse in Raleigh. We have Michael Cromwell
14 here today, he is an attorney; and Davalene Flowers, a
15 paralegal. They will be -- ultimately they'll be at
16 the courthouse in Raleigh. We'll have some people
17 locally here.

18 THE COURT: Okay. Thank you very much.

19 MS. BASH: Your Honor -- Your Honor --

20 THE COURT: Yes, ma'am.

21 MS. BASH: Zina Bash again. I just wanted
22 to say one more thing about the settlement master.

23 I think Mr. Bain would agree with this. But
24 while we are making progress on the questionnaire
25 itself, and I think we'll continue to make good

1 progress, I do think that it would be very helpful to us
2 for the process of a settlement master to be appointed
3 if there is going to be a new process. There are some
4 things that it would be helpful to get clarity on early
5 on so that we don't go too far down a path of the
6 questionnaire without some macro -- what I call kind of,
7 like, macro-level design questions to be adjudicated
8 between the parties. So to the extent that the Court
9 is considering that, we, on the plaintiffs' side, think
10 it would be very helpful to have somebody appointed to
11 do that. And I think DOJ would agree. I'm not in the
12 room, so I can't see what Mr. Bain is thinking. But I
13 just wanted to leave that with the Court.

14 THE COURT: So the Court would weigh in on
15 the contents of the questionnaire? Is that what you're
16 saying? Or you just want --

17 MS. BASH: No, not the content of the
18 questionnaire. Kind of what Your Honor had talked
19 about before with appointing somebody to help resolve
20 disputes. Right? So kind of discrete disputes that
21 come up along the way. So maybe it would be the
22 questionnaire, but I don't think -- it would kind of
23 just be designing the questionnaire and answering some
24 of the bigger level questions.

25 DOJ, for example, has resisted some of the

1 plaintiffs' proposals. But they have also said that if
2 we did have a neutral hear both sides and adjudicate,
3 let's say, for example, that design dispute, then they
4 would be willing under many circumstances to abide by
5 the decision of the neutral to kind of break a logjam.

6 So it would be in that capacity that we had
7 envisioned the settlement master and had discussed
8 having a settlement master to adjudicate those things.
9 We, on the plaintiffs' side, still believe that would be
10 a helpful person to be involved in the discussions.

11 MR. BELL: I think you said earlier, Your
12 Honor, that we'll be hearing from the Court on that.
13 So I think some of this is premature until we hear.

14 THE COURT: What do you think?

15 MR. BAIN: Yes, Your Honor, I agree with Ms.
16 Bash that we had been talking about the questionnaire,
17 and we had kind of reached some points where we had some
18 differences that a settlement master would help us
19 resolve with respect to how we, for example, value
20 economic losses. And so that's when we kind of came to
21 the Court and said we think a settlement master would be
22 helpful to help us talk through those and maybe reach
23 some agreements on how we do that.

24 THE COURT: My recollection is it sounded
25 like that was -- you all were expecting that to be baked

1 into that person's role, that they would reach a
2 decision on what's in that questionnaire.

3 MR. BELL: Help guide us through.

4 THE COURT: All right.

5 MR. BELL: So I guess what we're saying is
6 if there's going to be a settlement master, we don't
7 want to proceed on another track.

8 If there's not going to be one, we need to
9 know that as well.

10 THE COURT: Because he or she may undo what
11 you've done. I've got it.

12 All right. Thank you very much.

13 (Concluded at 11:36 a.m.)

14 - - -

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Tracy L. McGurk, RMR, CRR, Federal Official Court Reporter, in and for the United States District Court for the Eastern District of North Carolina, do hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Tracy L. McGurk_____

____3/21/2024____

Tracy L. McGurk, RMR, CRR

Date